

EXHIBIT P

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Government,

HONORABLE GEORGE CARAM STEEH

v.

No. 12-20254

FUJIKURA, LTD,

Defendant.

GUILTY PLEA AND SENTENCE

Thursday, June 21, 2012

- - -

APPEARANCES:

For the Government:

MATTHEW LUNDER, ESQ.
U.S. Department of Justice

For the Defendant:

JAMES COOPER, ESQ.

- - -

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E X H B I T S

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N O N E

Detroit, Michigan

Thursday, June 21, 2012

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THE CLERK: Case Number 12-20254, United States of America versus Fujikura, Limited.

MR. LUNDER: Good morning, your Honor.

THE COURT: Good morning.

MR. COOPER: Good morning, your Honor. My name is James Cooper. I'm with Arnold and Porter in Washington, D.C. I'm counsel to Fujikura, Limited.

With me in the courtroom is Mr. Takashi Kunimoto, who is the corporate representative and a member of the board. Also with me is Kaoru Hattori, who is local counsel to the company in Tokyo, Japan. She had come for this hearing, and for purposes of the discussion and the Rule 11 colloquy and allocution, I would request that Ms. Hattori stand next to Mr. Kunimoto. His English is strong, but there may be occasions when he will want to have input from her, if that is acceptable?

THE COURT: That will be fine. If you like to both step up then.

MR. COOPER: Also here is Bill Sankbeil from the Kerr and Russell firm in Detroit, and in addition the company's chief legal officer Norikazu Sato, who has come

1 from Tokyo, as well as counsel to the chairman of the U.S.
2 subsidiary of America Fujikura Limited, Makoto Itahashi,
3 who is in the courtroom in the gallery, along with my
4 colleague Daniel Garten.

5 **THE COURT:** Okay. That is quite a crowd.
6 Welcome to all.

7 And Mr. Lunder, you are here from the government?

8 **MR. LUNDER:** Yes.

9 **THE COURT:** Okay. Again, the Court has been
10 presented in this case with a proposed Rule 11 plea
11 agreement, the waiver of indictment and acknowledgement of
12 information, and I gather from these documents, again is
13 it two counts in this case as well?

14 **MR. LUNDER:** One count information.

15 **THE COURT:** All right. Thanks. I understand
16 then that your client, Mr. Cooper, is pleading guilty to
17 that one count, is that right?

18 **MR. COOPER:** That is correct, your Honor.

19 **THE COURT:** We'll have you sworn. Raise your
20 right hand, please.

21
22 (Defendant sworn in by deputy clerk.)
23

24 **THE COURT:** Okay. Would you state your name
25 for us and spell your last name?

1 **THE DEFENDANT:** My name is Takashi Kunimoto.

2 **THE COURT:** Perhaps you should spell it all.

3 **MR. COOPER:** T-a-k-a-s-h-i K-u-n-i-m-o-t-o.

4 **THE COURT:** Thank you.

5 You are here appearing as the corporate
6 representative for the defendant Fujikura limited, is that
7 right?

8 **THE DEFENDANT:** Yes, your Honor.

9 **THE COURT:** You have been duly authorized by
10 a resolution of the corporate board?

11 **THE DEFENDANT:** Yes, your Honor.

12 **THE COURT:** And in that capacity -- what is
13 your employment capacity in relation to the corporation?

14 **THE DEFENDANT:** Senior vice-president and
15 member of the board of Fujikura Limited.

16 **THE COURT:** In your capacity, you've had the
17 opportunity to review the documents that you have signed
18 on behalf of the corporation?

19 **THE DEFENDANT:** Yes, your Honor.

20 **THE COURT:** And that includes an
21 acknowledgement of the information in this case, as well
22 as a waiver of indictment, is that right?

23 **THE DEFENDANT:** Yes, your Honor.

24 **THE COURT:** You understand by approving those
25 documents and proceeding today, you are waiving your right

1 to have a grand jury consider the charges against the
2 corporation?

3 **THE DEFENDANT:** Yes, your Honor.

4 **THE COURT:** That the corporation has an
5 absolute right to have the matter first submitted to a
6 grand jury for determination of the appropriate charges to
7 be brought, you understand that?

8 **THE DEFENDANT:** Yes, your Honor.

9 **THE COURT:** And only after 16 of 23 citizens
10 summoned to serve as a grand jury approve charges, it's
11 only after that that the corporation would have to take
12 its defense?

13 **THE DEFENDANT:** Yes, your Honor.

14 **THE COURT:** And so by waiving the right to
15 have the matter considered by the grand jury, the
16 corporation is giving up the chance that the grand jury
17 would decide no charges at all are appropriate against the
18 corporation, you understand that?

19 **THE DEFENDANT:** Yes, your Honor.

20 **THE COURT:** You also have signed this Rule 11
21 plea agreement, is that right?

22 **THE DEFENDANT:** Yes, your Honor.

23 **THE COURT:** And you have gone over that
24 document also with Mr. Cooper?

25 **THE DEFENDANT:** Yes, your Honor.

1 **THE COURT:** You believe that you understand
2 all of its terms?

3 **THE DEFENDANT:** Yes, your Honor.

4 **THE COURT:** And you're satisfied with the
5 advice and assistance that he has provided you?

6 **THE DEFENDANT:** Yes, your Honor.

7 **THE COURT:** You understand that the
8 corporation, of course, is waiving a number of important
9 legal rights if it proceeds to plea guilty to these
10 charges today as set forth in the information?

11 **THE DEFENDANT:** Yes, your Honor.

12 **THE COURT:** And you understand that the
13 maximum penalty provided by statute for this violation is
14 a fine -- a criminal fine of the greatest sum of either
15 100 million, or twice the gross pecuniary gain that was
16 derived from the crime alleged, or the twice the gross
17 pecuniary loss caused to the victims of the crime by the
18 criminal conspiracy alleged here, you understand that?

19 **THE DEFENDANT:** Yes, your Honor.

20 **THE COURT:** You also understand that the
21 Court for the violation would have the statutory option to
22 impose a term of probation from one to five years in
23 length?

24 **THE DEFENDANT:** Yes, your Honor.

25 **THE COURT:** And in addition could consider

1 and order restitution to the victims of the offense?

2 **THE DEFENDANT:** Yes, your Honor.

3 **THE COURT:** Lastly, you understand by statute
4 the Court would order a special assessment of -- this
5 says \$400. Is that accurate?

6 **MR. LUNDER:** Correct, your Honor.

7 **MR. COOPER:** Correct, your Honor.

8 **THE COURT:** For the conviction?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** I think we let the previous
11 defendant off with a \$400 special assessment, and there
12 were two counts. It probably should have been eight,
13 right?

14 **MR. LUNDER:** Yes.

15 **THE COURT:** So you understand if that the
16 Court accepts this Rule 11 plea agreement, the penalties
17 to be imposed would include a \$20 million fine payable in
18 full within 15 days of the date that the judgment of
19 conviction enters, you understand that?

20 **THE DEFENDANT:** Yes, your Honor.

21 **THE COURT:** Okay. And in addition, the Court
22 would be ordering the \$400 special assessment required by
23 statute?

24 **THE DEFENDANT:** Yes, your Honor.

25 **THE COURT:** And the Court would order no term

1 of probation, and no restitution in light of the
2 availability of civil causes of action, many of which have
3 already been undertaken?

4 **THE DEFENDANT:** Yes, your Honor.

5 **THE COURT:** Okay. The corporation by
6 pleading guilty, of course, gives up a number of important
7 legal rights, including the right to have a trial in this
8 case, you understand that?

9 **THE DEFENDANT:** Yes, your Honor.

10 **THE COURT:** And at that trial, the
11 corporation has a right to be represented by an attorney,
12 you understand?

13 **THE DEFENDANT:** Yes, your Honor.

14 **THE COURT:** Do you also understand that the
15 corporation would be giving up its right to contest the
16 jurisdiction of the United States to prosecute the case?

17 **THE DEFENDANT:** Yes, your Honor.

18 **THE COURT:** And to have its trial before a
19 jury of 12 citizens who would make the ultimate decision
20 on the outcome of the case?

21 **THE DEFENDANT:** Yes, your Honor.

22 **THE COURT:** You understand under some
23 circumstances, the company could waive its right to a jury
24 trial and have the Court alone make the decision?

25 **THE DEFENDANT:** Yes, your Honor.

1 **THE COURT:** Assuming a jury trial, you
2 understand that the jury's decision would be -- before it
3 could be accepted, it would have to be unanimous, that is,
4 all 12 would have to agree that the corporation is guilty
5 beyond a reasonable doubt before a verdict could be
6 accepted?

7 **THE DEFENDANT:** Yes, your Honor.

8 **THE COURT:** And you understand at the trial,
9 the corporation would be presumed to be innocent until
10 each element of the offense is proven beyond a reasonable
11 doubt to the jury's satisfaction, you understand that?

12 **THE DEFENDANT:** Yes, your Honor.

13 **THE COURT:** You understand at a trial, Mr.
14 Cooper would help you throughout the case, and he would
15 have the opportunity to cross examine all the witnesses
16 called to testify against the corporation?

17 **THE DEFENDANT:** Yes, your Honor.

18 **THE COURT:** And in addition, it could have
19 the Court order witnesses into court to testify for the
20 corporation if you wish?

21 **THE DEFENDANT:** Yes, your Honor.

22 **THE COURT:** You understand that if the
23 corporation were convicted at the trial, it would have a
24 right to appeal that conviction and the sentence imposed
25 by the Court, and by entering into this agreement, the

1 corporation will be waiving those rights as well?

2 **THE DEFENDANT:** Yes, your Honor.

3 **THE COURT:** Have there been any promises made
4 to the corporation causing it to plea guilty today that
5 are not set forth in this Rule 11 agreement?

6 **THE DEFENDANT:** No, your Honor.

7 **THE COURT:** Has anyone tried to force this
8 plea of guilty by any pressure, duress or mistreatment of
9 any kind?

10 **THE DEFENDANT:** No, your Honor.

11 **THE COURT:** Do you believe the corporation
12 has made its decision to plea guilty to the offense
13 voluntarily and because it believes it is guilty of the
14 charges brought?

15 **THE DEFENDANT:** Yes, your Honor.

16 **THE COURT:** Now understanding then the
17 consequences of the conviction to enter here, and
18 understanding the rights that the corporation will be
19 giving up in order to do so, is it still your wish to
20 tender a plea of guilty to these charges?

21 **THE DEFENDANT:** Yes, your Honor.

22 **THE COURT:** One last point about the rights
23 the corporation is giving up, I mentioned that the
24 government must prove each element of the charge beyond a
25 reasonable doubt before a conviction can occur in the

1 case, you understand that?

2 **THE DEFENDANT:** Yes, your Honor.

3 **THE COURT:** And in this connection the
4 government first would have to prove that there was,
5 indeed, a criminal agreement, a conspiracy involving at
6 least two or more individuals or entities?

7 **THE DEFENDANT:** Yes.

8 **THE COURT:** For the purpose of which was to
9 restrain trade, you understand that?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** And secondly, the government
12 would have to prove that your company, Fujikura,
13 voluntarily entered into that agreement knowing its
14 purposes. You understand that element?

15 **THE DEFENDANT:** Yes, your Honor.

16 **THE COURT:** And by -- and that the agreement
17 affected interstate or foreign commerce as a consequence,
18 you understand that?

19 **THE DEFENDANT:** Yes, your Honor.

20 **THE COURT:** By pleading guilty, of course,
21 you won't have a trial. So you're waiving all the trial
22 rights that we discussed earlier?

23 **THE DEFENDANT:** Yes, your Honor.

24 **THE COURT:** Now understanding the
25 consequences and the rights that the corporation is giving

1 up, how does Fujikura wish to plea to the charge of
2 conspiracy to restrain trade, guilty or not guilty?

3 **THE DEFENDANT:** Guilty, your Honor.

4 **THE COURT:** Okay. All right. Sir, can you
5 tell me what occurred, what was done by the corporation
6 that you believe renders it guilty in this case?

7 **MR. COOPER:** Your Honor, if I might read a
8 prepared statement of the facts into the record, and then
9 the Court could inquire of Mr. Kunimoto whether he concurs
10 with the facts.

11 **THE COURT:** That will be fine, Mr. Cooper.

12 **MR. COOPER:** Thank you, your Honor.

13 Fujikura Limited is an entity organized and
14 existing under the laws of Japan with its principal place
15 of business in Tokyo, Japan. Fujikura manufactures
16 automotive wire harnesses and related products, and it
17 engaged in the sale of automotive wire harnesses and
18 related products in the United States and elsewhere.

19 Automotive wire harnesses are automotive
20 electrical distribution systems used to direct and control
21 electronic components, wiring and circuit boards.

22 For the purposes of this plea agreement, related
23 parts include cable bonds, automotive wiring connectors,
24 automotive wiring terminals and fuse boxes.

25 During the period of the conspiracy, which is from

1 approximately January 2006 to February 2010, certain
2 employees of the company engaged in discussions and
3 attended meetings with competitor companies involved in
4 the manufacturer and sale of automotive wire harnesses and
5 related products.

6 During such meetings and conversations, agreements
7 were reached to A, allocate the supply of automotive wire
8 harnesses and related products sold to an automobile
9 manufacturer on a model by model basis; B, to rig bids
10 quoted to an automobile manufacturer for automotive wire
11 harnesses and related products, and C, to fix, stabilize
12 and to maintain the prices, including coordinating price
13 adjustments requested by an automobile manufacturer of
14 automotive wire harnesses and related products sold to an
15 automobile manufacturer in the United States, and that
16 manufacturer is Subaru of Indiana Automotive,
17 Incorporated.

18 During the relevant period, automotive wire
19 harnesses and related products sold by one or more of the
20 conspirator firms and equipment and supplies necessary to
21 the production and distribution of automotive wire
22 harnesses and related products, as well as payments for
23 automotive wire harnesses and related products, traveled
24 interstate and foreign commerce.

25 The business activities of the company, Fujikura

1 Limited and its co-conspirators in connection with the
2 production and sale of automotive wire harnesses and
3 related products that were the subject of this conspiracy,
4 were within the flow of and substantially affected
5 interstate and foreign trade and commerce.

6 The meetings and conversations described above
7 took place in Japan, and automotive wire harnesses and
8 related products that were the subject of the conspiracy
9 were sold to an automobile manufacturer in the United
10 States, that is Subaru of Indiana Automotive by the
11 company's United States subsidiary, which is located
12 within the Eastern District of Michigan.

13 As an enterprise, Fujikura employed more than
14 5,000 individuals during the relevant time period.
15 Fujikura sales of automotive wire harnesses and related
16 products affecting an automobile manufacturer in the
17 United States totaled approximately \$32 million during the
18 period of January 2006 to February 2010.

19 **THE COURT:** All right. Having heard the
20 statement of facts read by your attorney, did you first
21 understand everything that he described as the factual
22 basis for this determination of guilt?

23 **THE DEFENDANT:** Yes, your Honor.

24 **THE COURT:** And do you agree that it
25 accurately states the acts committed and the agreements

1 made in violation of this statute?

2 **THE DEFENDANT:** Yes, your Honor.

3 **THE COURT:** Okay. Anything else that you
4 believe should be addressed in connection with the plea
5 portion of this hearing?

6 **MR. LUNDER:** No, your Honor.

7 **THE COURT:** Mr. Cooper?

8 **MR. COOPER:** Nothing more from me.

9 **THE COURT:** The Court is satisfied that the
10 plea is voluntary, knowledgeable and accurate. The
11 elements of the offense have been established by the
12 statement subscribed to by the witness, and the Court will
13 therefore accept the plea.

14 As it relates to the plea agreement, the Court has
15 had the opportunity to review Mr. Lunder's sentencing
16 memorandum and, of course, the formula there starts with
17 the -- with the volume of commerce affected, and I heard
18 from your factual recitation, Mr. Cooper, that the company
19 agrees to 32.5 million was the amount I think.

20 **MR. COOPER:** I did say 32, approximately
21 32 million.

22 **THE COURT:** Okay.

23 **MR. COOPER:** I don't know the precise number
24 off the top of my head.

25 **THE COURT:** I'm sorry. It was 32.2 actually

1 in the memorandum.

2 **MR. COOPER:** We believe that's accurate, your
3 Honor.

4 **THE COURT:** Okay. As it relates to the
5 calculation guideline range, you are satisfied with the
6 with the method employed to do that?

7 **MR. COOPER:** Your Honor, we don't object to
8 the Court referring to the calculations conducted by the
9 government in determining the reasonableness of the
10 sentence. If it were a contested hearing, we might
11 disagree on certain points, but we believe that in light
12 of all of the factors under Section 3553(a), the
13 seriousness, the substantial fine about to be imposed, and
14 the deterrent impact of that, as well as the company's
15 substantial assistance to the government in its
16 investigation and ongoing cooperation, as well as the
17 substantial penalty that the company has already paid for
18 related conduct in Japan, which is approximately
19 14 million U.S. dollars, we believe that the Court has
20 before it all the information in front of you.

21 **THE COURT:** Okay. And you would waive the
22 preparation of Pre-Sentence Investigation Report?

23 **MR. COOPER:** We recommend that the Court
24 impose the \$20 million fine without a Pre-Sentence
25 Investigation Report.

1 **THE COURT:** Okay. Mr. Lunder on behalf of
2 the government, you as well would ask the Court to act
3 consistent with your sentencing memorandum?

4 **MR. LUNDER:** Yes, your Honor.

5 **THE COURT:** On behalf of the corporation sir,
6 is there anything else that you would like to say before
7 the Court imposes sentence?

8 **THE DEFENDANT:** Yes, your Honor.

9 On behalf of Fujikura Limited, let me state how
10 sincerely we regret the conduct that has led to this
11 proceeding today.

12 The company has taken this matter very seriously,
13 as reflected by the substantial punishment recommended in
14 the plea agreement.

15 In response to these investigations, top
16 management of Fujikura has instructed that all employees
17 to be made to understand that cartel activity is
18 prohibited. In this regard, the company has implemented a
19 more vigorous compliance program. This includes extensive
20 training of employees and more robust audit and oversight
21 of our sales functions. The conduct that led to our
22 guilty plea occurred prior to this revamping of our
23 compliance effort. We believe these compliance measures
24 are equipping us to avoid any repeat of this kind of
25 conduct that results today in the company's conviction in

1 the United States.

2 We sincerely apologize to the Court and all
3 parties concerned for this violation of law, and we are
4 working diligently to remain a compliant company going
5 forward.

6 Thank you.

7 **THE COURT:** Okay. Thank you.

8 The Court is satisfied that the penalties agreed
9 upon between the parties and embodied in the sentencing
10 memorandum submitted by Mr. Lunder are fully appropriate
11 and are supported by an assessment of both the sentencing
12 guidelines that are discussed in the memorandum, as well
13 as the factors enumerated in Section 3553(a) by agreeing
14 to a fine of \$20 million.

15 The company is certainly going to be held
16 accountable fully for its culpable conduct. It will
17 certainly be deterred from future mistakes of this nature,
18 and the -- and the penalty will be assessed in a manner
19 that is consistent with the other parties who have been
20 found guilty of related conduct as a part of this
21 investigation and prosecution.

22 As it relates to the guideline range, the starting
23 point for the methodology determined to determine the fine
24 begins with the volume of commerce, which as indicated in
25 the agreed upon facts in the case and the Rule 11

1 agreement, represented approximately \$32.2 million, and
2 the base fine resulting is 6.44 million as 20 percent of
3 the affected volume.

4 There are points to be added to the offense score
5 based on the number of employees, and then a reduction to
6 be had based upon the company's clearly demonstrated
7 recognition and acceptance of responsibility, and the
8 multiplier provided for in Section 8(c)2.6 of the
9 guidelines would have ultimately given a culpability score
10 of eight, yield a fine range of 10.3 to 20.6 million.

11 The parties have apparently agreed that an upward
12 adjustment from the bottom of that range to again fully
13 account for the seriousness of the offense, would yield a
14 fine amount of 22.2 million, and then the parties have
15 again agreed that the appropriate discount of that fine
16 range for the substantial assistance to the government
17 provided by the corporation would be 10 percent resulting
18 in the agreed upon fine of 20 million.

19 That again, the Court finds consistent with not
20 only the guideline calculation, but the sentencing
21 factors, the need to assess a substantial fine.
22 Obviously, it's accounted for in connection with the first
23 of those factors that deals with the seriousness of the
24 full facts and circumstances of the violation, and also
25 meets the objectives of the second of the statute factors

1 of the deterrence.

2 The Court finds the level necessary to accomplish
3 that objective is mitigated somewhat by the measures
4 described here that have already been undertaken by the
5 corporation to avoid making those mistakes again, and the
6 corporate compliance enforcement apparently has been much
7 improved since this conduct came to light, and again, the
8 fine under the factors in the statute would avoid any
9 unwarranted disparity between the amount assessed here and
10 the amounts assessed in connection with the other
11 offenders.

12 Accordingly, and pursuant to the Sentencing
13 Reform-- yes?

14 **MR. LUNDER:** I apologize for interrupting,
15 your Honor, but there is one point of clarification that I
16 think we should put on the record.

17 **THE COURT:** Okay.

18 **MR. LUNDER:** For accuracy sake, when you were
19 reciting the fine calculation, you mentioned that with
20 respect to the upward adjustment aspect of the
21 calculation, cooperation discount, that the defendant had
22 agreed. I just want to point out this is the United
23 States' sentencing memorandum and calculation, to which
24 the defendant did not object.

25 **THE COURT:** All right. Okay. Yes, I should

1 have picked that nuance up from what Mr. Cooper said
2 earlier, but thank you for that clarification.

3 **MR. LUNDER:** You're welcome.

4 **THE COURT:** And the Court is satisfied,
5 especially in light of the absence of an objection that
6 the recommended sentence then is an appropriate one.

7 I will therefore accept the Rule 11 agreement
8 that's been entered into and impose the sentence
9 consistent with it.

10 So accordingly and pursuant to the Sentencing
11 Reform Act of 1984, the Court will order that the
12 defendant pay a fine in the amount of \$20 million, within
13 15 days of the date this judgment of conviction is
14 entered, which will be today. A \$400 special assessment
15 is required by the statute.

16 The Court, for the reasons earlier stated, will
17 waive the imposition of a restitution order, and order of
18 probation, again for reasons that are well described in
19 this hearing.

20 Is there anything else that you believe the
21 sentence ought to include?

22 **MR. COOPER:** No, your Honor. We are
23 satisfied with the imposition of the sentence. We would
24 request that the judgment reflect that there will be a
25 wire transfer of the funds.

1 **THE COURT:** Okay. We will include that
2 language in the judgment as well.

3 All right. Again, we will get this entered today
4 and wish you good luck, sir.

5 **MR. COOPER:** Thank you.

6 **MR. LUNDER:** Thank you, your Honor.

7
8 (Proceedings concluded.)

9 - - -

10 **C E R T I F I C A T I O N**

11 I, Ronald A. DiBartolomeo, official court
12 reporter for the United States District Court, Eastern
13 District of Michigan, Southern Division, appointed
14 pursuant to the provisions of Title 28, United States
15 Code, Section 753, do hereby certify that the foregoing is
16 a correct transcript of the proceedings in the
17 above-entitled cause on the date hereinbefore set forth.

18 I do further certify that the foregoing
19 transcript has been prepared by me or under my direction.

20
21 _____
22 Ronald A. DiBartolomeo, CSR
Official Court Reporter

Date

23 - - -
24
25